

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

AXIALL CORPORATION and
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

vs.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.; ALLIANZ
GLOBAL RISKS US INSURANCE COMPANY;
ACE AMERICAN INSURANCE COMPANY;
ZURICH AMERICAN INSURANCE COMPANY;
GREAT LAKES INSURANCE SE; XL
INSURANCE AMERICA, INC.; GENERAL
SECURITY INDEMNITY COMPANY OF
ARIZONA; ASPEN INSURANCE UK LIMITED;
NAVIGATORS MANAGEMENT
COMPANY, INC.; IRONSHORE SPECIALTY
INSURANCE COMPANY; VALIDUS
SPECIALTY UNDERWRITING SERVICES,
INC.; and HDI-GERLING AMERICA
INSURANCE COMPANY,

Defendants.

Civil Action No. 19-C-59

Judge Hummel

FILED
2019 OCT 22 AM 10:25
Jesse H. Hummel

ORDER FOLLOWING SEPTEMBER 5, 2019 HEARING

On the 5th day of September 2019, came the Plaintiffs, by and through their counsel, Jeffrey V. Kessler, John M. Sylvester, Paul C. Fuener, David R. Osipovich, and Travis L. Brannon, and came the Defendants, by and through their counsel, James A. Varner, Sr., Debra Tedeschi Varner, and Justin M. Sumrall, for a previously noticed hearing on the Defendants' Motion to Dismiss or Stay in Favor of First-Filed Foreign Action.

Whereupon the Court, having reviewed Defendants' Motion, and the memoranda of law filed in support thereof and in opposition thereto, and having heard the arguments of counsel, it is hereby **ORDERED** that Defendants' Motion to Dismiss or Stay in Favor of First-Filed Foreign Action is **DENIED**.

It is further **ORDERED** that Count III of Plaintiffs' Complaint, titled "Bad Faith - Violation of Georgia Code § 33-4-6," is hereby **DISMISSED**. The Court **FINDS** that while Georgia law governs the coverage issues pled in Count II, Plaintiffs' bad-faith claims against Defendants are governed by West Virginia law, and therefore Count III of Plaintiffs' Complaint pled under Georgia law cannot be maintained simultaneously with Counts IV and V pled under West Virginia law. The Court acknowledges that this issue has not been briefed or argued before the Court.

It is further **ORDERED** that Plaintiffs' claims contained in Count IV (Bad Faith - West Virginia Common Law) and Count V (Unfair Trade Practices - Violation of W. Va. Code § 33-11-4) are hereby **BIFURCATED** from Plaintiffs' claims contained in Count I (Declaratory Judgment) and Count II (Breach of Contract), and are hereby **STAYED** pending further order of a court of competent jurisdiction.

It is further **ORDERED** that discovery in this matter will remain stayed for forty-five (45) days, until October 21, 2019, to allow for the possibility that one or more parties may petition for a writ of prohibition. Should either or both parties file a writ of prohibition with the West Virginia Supreme Court of Appeals, the case shall remain stayed until such stay is lifted by the West Virginia Supreme Court of Appeals, or by this Court upon return of the case. If any party determines, before October 21, 2019, that it will not seek a writ of prohibition, that party shall notify the Court.

Any and all objections to the Court's rulings are hereby noted and preserved.

It is so **ORDERED**.

The Clerk of this Court is **DIRECTED**, in accord with W. Va. R. Civ. P. 77(d), to transmit a copy of this Order to all counsel of record.

Entered: 10.22.19



DAVID W. HUMMEL, JR., CHIEF JUDGE

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